

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



Legal Counsel Division

July 27, 2005

Trudy Reeves
Commissioner, ANC 3C-06
3816 Porter St., NW
Washington, DC 20016

Re: Whether an ANC may expend funds to purchase playground equipment for placement in a community park?

Dear Commissioner Reeves:

This letter responds to your e-mail of July 6, 2005 in which you inquire concerning the propriety of a grant from ANC 3C to the McLean Gardens Playground Committee (Playground Committee) for the purchase of playground equipment to be installed in a neighborhood park. This letter will address whether an ANC has the authority to make such a grant.

According to the grant application, the Glover Archbold Park at 39th St. and Porter St. was the site of a community playground until 2004. The playground, geared to children ages 5 to 12, was closed when the aging equipment had to be removed due to safety concerns. In response, concerned neighborhood citizens formed the Playground Committee with the goal of securing funding to replace the equipment.

Since its formation, the Playground Committee has secured a permit from the National Park Service, the owners of the park, to install the equipment at the park and entered into an agreement for liability insurance covering any injuries occurring on the equipment. Additionally, the Committee has obtained a quote of \$43,780 for the cost of the equipment from Mid-Atlantic Products. Mid-Atlantic is the only company authorized by the National Park Service to supply the equipment.

The Playground Committee is now attempting to raise the necessary capital for the project. So far they have secured \$14,180 from the Mclean Gardens Condominium Association (Condo Association) and \$2000 from local businesses.

The grant from ANC 3C would provide \$15,480 towards the total cost, with the funds to be delivered in two phases. An initial allocation of \$3,000, to be followed by the

remaining \$12,480 once the full amount necessary to purchase the equipment has been raised by the Playground Committee. The second payment is to be reduced if the Playground Committee secures funding in excess of the total cost of the equipment.

An ANC grant of this kind has three basic statutory requirements: the grant must be to an organization not an individual, the benefits must be public in nature, and the grant must not duplicate other government services. *See* Section 16(m) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.13(m) (2004 Supp.), as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000, D.C. Law 13-135 (collectively, the “ANC Act”).

As discussed in a letter I sent to Philip C. Spalding on July 13, 2005, an ANC grant can be to either a public or private organization, but not to an individual. The grant at issue will give funds to the Playground Committee, which will transfer the money to the Condo Association for the actual purchase. Both of these fund recipients are organizations and, from the facts you present, appear to meet the requirements of D.C. Official Code § 1-309.13(m).

The second requirement, that ANC grants provide a benefit that is public in nature, is also met. As stated in the grant application, the playground equipment would be installed on a public park, which is open from dawn till dusk year round. The location of the equipment would make it available for use by anyone in the ANC community area.

Finally, a grant must not duplicate a service “already performed by the District Government.” *Id.* Although the District may fund parks and playgrounds in other situations, the fact that the District has performed a task does not automatically disqualify an ANC from funding a similar action.

In a March 5, 1992 Letter to Stephen Belcher, this Office approved a proposal to issue a grant to an organization called Trees for the City for the purchase of trees for the neighborhood, even though the Department of Public Works Tree Maintenance Division was responsible for planting trees in the District. *Id.* In that letter we stated:

If the Department of Public Works is not, for any reason, in a position to accomplish the tree planting work ... then it cannot be said that the Trees for the City proposal would duplicate an "already available" government-program. Thus, if the tree planting offered in the Trees for the City proposal would not otherwise be accomplished in the near future by the Department of Public Works, then it would not be a violation of the limitations set forth in [D.C. Official Code § 1-309.13(m)].

The same reasoning applies to the present grant. Although the Department of Parks and Recreation (DPR) would normally be responsible for construction of District parks, you advise that, upon inquiry with DPR, you were informed that the current budget is insufficient to construct playground equipment on National Park Service land and that

there are no plans to request a budget increase for this purpose in the future. Therefore, the grant to the Playground Committee would not duplicate an available government service. Accordingly, your ANC has the authority to make the proposed grant to the Playground Committee.

Sincerely,

ROBERT J. SPAGNOLETTI
Attorney General

/S/

RJS/dps

(AL-05-438)